

P-3115/NA-93-17 ORDER APPROVING SETTLEMENT AGREEMENT AND GRANTING
CONTINGENT CERTIFICATE OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Equal Net
Communications, Inc. for a Certificate of
Authority to Resell Long Distance Service

ISSUE DATE: January 12, 1995

DOCKET NO. P-3115/NA-93-17

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PROCEDURAL HISTORY

On September 15, 1991, Equal Net Communications, Inc. (now known as EqualNet Corporation) began serving customers in Minnesota. EqualNet is a switchless reseller which offers intrastate AT&T long distance service.

On July 6, 1993, EqualNet filed a request for a certificate of authority to operate in Minnesota.

On December 2, 1993, the Department of Public Service (the Department) filed a report and recommendations. The Department recommended that the Commission find that EqualNet had violated Minn. Stat. § 237.16, subd. 4 and 237.74, subd. 12¹ by providing intrastate long distance service in Minnesota prior to receiving Commission authority. The Department noted, however, that EqualNet presently met all reseller filing requirements and that it charged rates comparable to AT&T's. The Department also noted that the Company had sufficient financial strength and that no consumer complaints had been filed against it. For these reasons, the Department stated, the Commission should grant the Company a certificate of authority. The certificate should be contingent upon the Company's paying any penalty to be negotiated with the Office of the Attorney General or to be ordered by district court.

On December 22, 1993, EqualNet filed reply comments. The Company stated that it had not petitioned for authority in 1991 because it did not understand at that time that the relatively new process of switchless reselling required Commission authority. When the Company found out in 1993 that it was necessary to file for authority, it did so at once, without prompting by the Department or the Commission.

On December 29, 1994, the Department and EqualNet filed a proposed Settlement Agreement with the Commission. A signed version of the document was filed on January 3, 1995.

¹ The Company was in violation of Minn. Stat. § 237.16, subd. 4, the original prohibition against unauthorized provision of telephone service, until August 1, 1993. On that date Minn. Stat. § 237.74, subd. 12, which applies to resellers like EqualNet, went into effect. From that point on, the Company was in violation of the second statute.

On January 3, 1994, the proposed Settlement Agreement came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE PROPOSED SETTLEMENT AGREEMENT

Under the terms of the proposed Settlement Agreement, EqualNet would pay \$2,225 to the State of Minnesota in lieu of any penalty for unauthorized provision of service. In consideration for the Company's penalty payment, the Department would recommend to the Commission that it grant the Company a certificate of authority. The Department would also recommend that the Commission make the following findings: EqualNet's penalty payment evidenced good faith and fitness to provide service; EqualNet did not charge unfair rates; no customers have filed complaints; and there has been no demonstration that any refunds to customers would be in the public interest.

II. COMMISSION ACTION

At the January 3, 1995, meeting, the Department's representative stated that disposition of this matter through the proposed Settlement meets two important public interest tests: the harm to the public, and any benefit to the Company from its wrongdoing. In this case, ratepayers were not harmed by the Company's unauthorized service because the rates charged were competitive and were agreed to by customers. The Company will not benefit from its unauthorized provision of service because the penalty agreed to in the Settlement exceeds the Company's net return from the inception of service to the date of filing for certification. For these reasons, the Department believes that the proposed Settlement is in the public interest.

The Commission always takes very seriously any allegation of unauthorized provision of service. In this case, the Commission agrees with the Department's analysis and finds that approval of the proposed Settlement is in the public interest. The Department has determined that the Company's service fulfills the standards for resellers. EqualNet's service is at a rate agreed to by its customers, and no EqualNet customer has filed a complaint against the Company. Because customers were provided fair and competitive service, there is no showing that refunds would serve the public interest.

The Commission finds that the Company presently evidences good faith intent and fitness to comply with regulation. EqualNet has cooperated with the Department's investigation, entered into fruitful negotiations with the Department, and is willing to pay a penalty as well as any regulatory expenses due and owing.

Approval of the Settlement is also in the public interest because it is administratively efficient. The parties' negotiated agreement, in conjunction with the Department's investigation, has accomplished any goal which could be achieved through referral to the Office of Attorney General.

For the above reasons, the Commission will approve the parties' proposed Settlement Agreement. The Commission will grant EqualNet a certificate of authority, contingent upon the Company's paying, within 30 days of the date of this Order, the agreed-upon penalty plus any regulatory expenses due and owing pursuant to Minn. Stat. § 237.295.

ORDER

1. The Commission approves the parties' attached Settlement Agreement filed January 3, 1995.
2. The Commission grants EqualNet a certificate of authority to resell long distance services in Minnesota, contingent upon the Company's paying, within 30 days of the date of this Order, the penalty agreed upon in the Settlement plus any regulatory expenses due and owing pursuant to Minn. Stat. § 237.295.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)